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October 31, 2011

To: Representative Crawford and members of the House Regulatory Reform Committee

From: ~~Mike Berkowitz, Sierra Club Michigan Chapter~~

**RE: SB 272 – “No Stricter than Federal”**

Dear Representative Crawford and members of the Senate Natural Resources, Environment and Great Lakes Committee,

We appreciate you taking time to consider our position on SB 473. **The Sierra Club Michigan Chapter urges you to vote NO on SB 272 (Kowall), a bill that would weaken protection for the Great Lakes and all aspects of Michigan’s environment.** This bill would prohibit the Governor and his/her agencies from issuing any regulation that is more stringent than federal law unless specifically authorized by the legislature. In effect it says there is nothing special about Michigan compared with any other state in the union.

Federal standards to protect environmental quality are designed to be a minimum standard below which states are not allowed to drop. They are intended to be a foundation which scientists, stakeholders and citizens can shape to meet that state’s needs. Federal regulations are written as “one size fits all”, with no particular accounting for the sensitivities and fragility of the world’s most important freshwater resources: the Great Lakes.

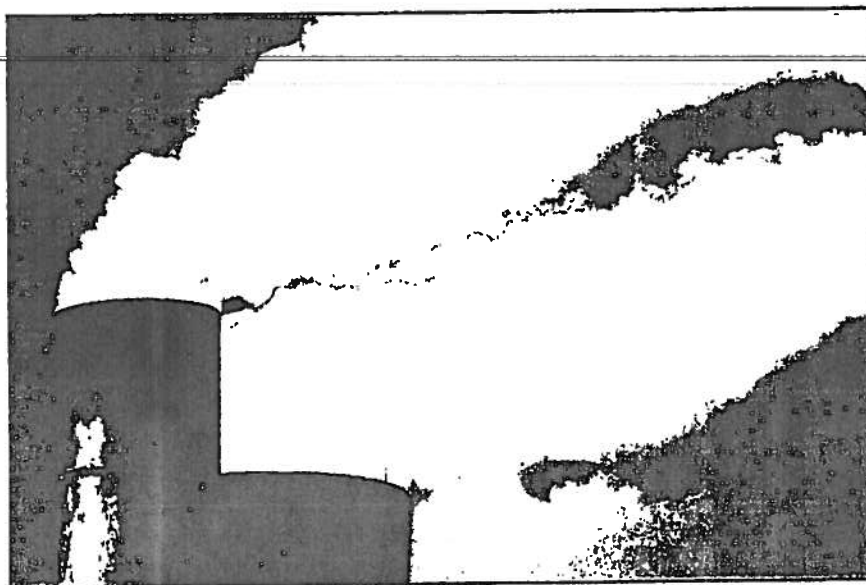
Governor William Milliken directed his environmental agency to adopt controls on the amount of phosphorous in detergents when it became clear that this pollutant was contributing to killing Lake Erie. Scientists, sportsmen and community leaders throughout Michigan clamored for action, and the state’s professional agency staff worked with those stakeholders to develop and adopt those controls. Lake Erie’s amazing recovery is largely due to Michigan’s leadership role. If SB 272 had been in place at this time, Lake Erie would have been devastated because the Governor’s hands would have been tied, and the legislature was not taking action.

Similar bills to SB 272 were passed in the 1970’s in North Carolina called the Hardison Ammendments. Over the 20 year period these statutes were in place, North Carolina’s air quality diminished drastically (among other environmental problems), and the 3 Governors in office during this period were not able to do anything to mitigate this. The Hardison Ammendments were repealed in 1991 because of their harmful effects on North Carolina’s environment. A report on impacts of the Hardison Ammendments on North Carolina’s environment is provided separately. SB 272 would likely have the same impact on Michigan, including damage to the Great Lakes.

**The Sierra Club Michigan Chapter urges you to vote NO on SB 272. Votes pertaining to this bill will be included in the Sierra Club’s legislative scorecard.**

Sincerely,

Mike Berkowitz, Chapter Organizer  
Sierra Club Michigan Chapter  
109 E. Grand River Ave.  
Lansing, MI 48906  
Office: (517) 484-2372 Ext. 13

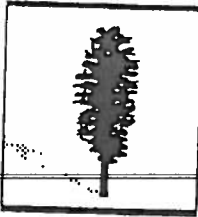


Robert Llewellyn

## The Hardison Amendments: Time For A Reappraisal?

by Jack Betts

*Fifteen years ago, North Carolina began tying its environmental regulations to those set forth by the federal government. In water quality, air quality, and hazardous wastes, the N.C. General Assembly said state regulations should be no more stringent than federal regulations. The theory was that the federal regulations were sufficiently tough, and that the state should not adopt tougher standards because it might deter potential new industries from locating here. But increasingly, experts say these so-called Hardison Amendments—after their sponsor, Sen. Harold Hardison—do not enhance sound environmental policy. In some past cases, the amendments have kept the state from considering or adopting strict standards, and in other cases, may have delayed the state's adoption of environmental regulations. Worse, they fear, the Hardison Amendments may hamper the state's future ability to deal with upcoming environmental problems unique to North Carolina—problems the federal regulations are not designed to address. For these reasons, it may be time to reappraise the Hardison Amendments.*



**I**t was 1973, during the U.S. Environmental Protection Agency's halcyon days of big budgets and aggressive environmental protection, and some legislative leaders were worried that a big federal government would go too far, too fast in its zeal to clean up our air and water supplies. In the closing days of the 1973 General Assembly, state Sen. Harold Hardison (D-Lenoir) saw to it that a special provision was written into the omnibus state budget bill.<sup>1</sup>

It seemed to make perfect sense. In plain language, Hardison's amendment to the state's water quality regulations forbade the adoption of water pollution rules that were "more restrictive than the most nearly applicable federal effluent standards." At the time, few noticed the amendment, and fewer still complained about it. After all, wasn't the EPA doing a good job already? And wouldn't tougher standards possibly harm North Carolina's quest for economic development? Who'd want to jeopardize the creation of new jobs, the expansion of industry, the building of the state's tax base?

Then came the 1975 General Assembly, and another Hardison amendment.<sup>2</sup> This one amended the state's air quality laws, declaring that air quality rules "shall be no more restrictive and no more stringent than required to comply with federal ambient air quality standards." That amendment also stipulated that "no air quality rules, regulations, procedures, plans, practices, air quality standards or emission control standards shall be adopted" unless the EPA had already adopted or proposed regulations, and unless the state first made a detailed economic impact statement and considered other effects of the rules.

By that time, many environmentalists were alarmed at the potential impact of the Hardison amendments on the state's environmental programs. But then-Gov. Jim Holshouser's emphasis on industrial expansion—followed by Gov. Jim Hunt's continued strong efforts to bring new jobs to the state—were main concerns of the legislature. Neither governor objected to the amendments, which drew support from a majority of legislators. There were some questions about the amendments, but those questions weren't enough to promote a legislative rebellion.

Another Hardison-type amendment—developed by a conference committee—was adopted in 1979, this time on hazardous wastes.<sup>3</sup> That amendment, similar to the previous pair, mandated that the

state's hazardous waste management program shall be no more comprehensive "than the hazardous waste program prescribed under the federal act," with one main exception: hazardous waste rules dealing with water tables, location near water supplies, and proximity to population centers "may be more comprehensive than the hazardous waste program prescribed under the federal act." Hardison says this clause, adopted in 1981, specifically allows certain rules to be tougher than federal rules and thus mitigates any damage. But it applies only to hazardous waste.

Shortly after the third Hardison amendment was adopted, President Reagan took office. The President implemented cuts in the growth of the EPA budget in an effort to relieve businesses from what he called excessive government regulation. Those cuts, environmentalists say, have meant a reduced federal role in environmental regulation and diminished enforcement efforts.

Now, seven years later, the declining federal role has prompted increasing opposition to the Hardison amendments in North Carolina. If the federal environmental agency has more constraints on its budget and relaxed environmental controls on pollution, environmentalists reason, there might be a corresponding relaxation of environmental protection efforts in North Carolina. And with the Hardison amendments in place, North Carolina wouldn't be able to deal effectively with environmental problems that might be unique to the state.

In fact, a number of leading state policymakers are saying it's time for a review of the Hardison amendments, and some are saying they should be scrapped outright. Among the former are Senator Hardison himself, who has said publicly that he doesn't want to obstruct environmental regulation, and former state Rep. Sam Johnson, a leading lobbyist for the state's business and industry groups. Among the latter is Gov. James G. Martin, who argues that the amendments may be hampering economic development, and that repealing the amendments would stimulate the economy and encourage development (see p. 116 of this article for more). And Lt. Gov. Robert B. Jordan III, who supported the Hardison amendments in the Senate in 1979 and 1981, now favors repeal of the Hardison amendments "because he believes North Carolina is equipped to make its own decisions on the environment," says aide Brenda Summers.

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*Jack Betts is Associate Editor of North Carolina Insight.*

## Repeal Efforts

**E**ditorial opposition to the Hardison amendments spread rapidly as public confidence in EPA's enforcement efforts—particularly on the cleanup of waste dumps—plummeted. The state's major newspapers uniformly and regularly criticized the amendments, and in his 1984 campaign for the governorship, then-U.S. Rep. James G. Martin of Charlotte promised environmentalists that he would work for repeal of all three Hardison amendments (see graphic, p. 115, for more). When Martin took office in 1985, environmentalists thought they had the votes lined up to approve legislation<sup>4</sup> by Rep. Joe Hackney (D-Orange) to delete the Hardison amendments.

By April 1985, the stage was set. "If this state wants to preserve its beauty and livability, it must not continue to be hamstrung by federal regulations that may be too weak to ensure that result," declared an editorial in *The News & Observer* of Raleigh in support of the Hackney bill.<sup>5</sup> *The Charlotte Observer* declared, "By approving [the bill], House members can begin to repair many North Carolinians' waning confidence in the state's willingness to protect the environment."<sup>6</sup> And the *Winston-Salem Journal* said, "Tar Heels tend to think they can manage their affairs quite well without outside guidance. That should be as true in protecting the natural environment as in other matters. Legislators should affirm the principle and repeal the needless limits imposed by the Hardison amendments."<sup>7</sup>

But Hackney's bill was defeated in the House on April 16, 1985 on a close vote, 51-62. Despite Governor Martin's support, Republicans in the House voted nearly 4-1 against the bill. (Of the 38 Republicans, eight voted yes, 29 voted no, and one abstained, while of the 81 Democrats, 43 voted for repeal, 33 against, and five abstained or were absent.) Repeal of the Hardison amendments was dead for two years. Efforts to repeal the amendments surfaced again in 1987, when Representative Hackney filed separate bills to delete the restrictions on hazardous waste and water quality rules.<sup>8</sup> But the bills got nowhere, and were lying inert in the House Judiciary III Committee when the legislature adjourned. Under the adjournment resolution, the bills cannot be considered in the 1988 short session without a suspension of the rules—always difficult to achieve.

So the Hardison amendments remain on the books, even as state officials and environmentalists continue to debate what effect they have had and whether they should be repealed. Environmentalists advocate repeal. On the other hand, state environmental officials say that the amendments have not been insurmountable impediments to environmental regulation in North Carolina.

That's because the wording of the Hardison amendments—each significantly different from the others—*seems* at first glance to allow the state to adopt regulations tougher than federal standards if the state first goes through a hearing process and makes an economic assessment of the proposed rule.

### *The Hardison Amendment on Water:*

"It is the intent of the General Assembly that the effluent standards and limitations and management practices adopted hereunder shall be no more restrictive than the most nearly applicable federal effluent standards and limitations and management practices."

— G.S. 143-215(c)

◆

## *The Hardison Amendment on Air:*

“... air quality rules, regulations, procedures, plans, practices, air quality standards, and emission control standards adopted by the [Environmental Management] Commission ... shall be no more restrictive and no more stringent than required to comply with federal ambient air quality standards or other applicable federal requirements ... except that no air quality rules, procedures, plans, practices, air quality standards or emission control standards shall be adopted ... unless the [Environmental Management] Commission first considers, among other things, an assessment of the economic impact of the proposed standards.”

—G.S. 143-215.107(f)

◆

But that is not really the case. *The economic impact statement clause appears in the language of only one amendment—the Hardison amendment on air quality.* There is no corresponding clause for the water quality Hardison amendment, though the hazardous waste amendment does allow tougher rules, but only in cases involving questions of water supply and proximity to population centers.

The actual latitude given the state is the subject of considerable debate even among the state officials most conversant with the Hardison amendments. If there is no federal standard for a water effluent or an air pollutant, then the state may adopt its own standard—but only after going through the economic assessment process. That’s the state’s operating procedure, based on a series of interpretations by the office of the Attorney General from 1975-1979.<sup>9</sup> But as Paul Wilms, director of the state’s Division of Environmental Management, points out, if the EPA has already adopted a standard for an air pollutant or a water effluent, then under the Hardison amendments, the state *cannot* adopt a more restrictive standard even if the state does hold hearings and makes an economic assessment. Yet Hardison himself is of the opinion that the state *can* adopt any standard it

wants to, if it will first go through the hearings process.

“The fact of the matter is,” says Professor Richard Andrews of UNC-Chapel Hill’s Institute for Environmental Studies, “that while the law does appear to allow you to adopt stricter standards, in most cases the state won’t do so because of the difficulty, the time, and the expense involved. So the Hardison amendments have this chilling effect on environmental regulation.”

Adds Lark Hayes, a lawyer and director of the N.C. office of the Southern Environmental Law Center in Chapel Hill, “The different wording of each Hardison amendment has sparked a legal debate about what each one really means. The precise nature of the handcuff, and the confusion about them, has created a big problem. It’s perplexing from a legal point of view.”

So perplexing and confusing are the Hardison amendments that they sometimes get blamed for delays that are due to similar-sounding statutes. Consider the case of the leaking underground storage tanks, for example.

Currently, the state is drafting new regulations that are designed to identify, clean up, and control

leaking underground storage tanks, often described as one of the state's more pressing environmental problems. In the Piedmont near the town of Kernersville and the community of Colfax, leaking oil and gasoline tanks have polluted well water, and have been linked to a variety of environmental and health problems. But the state has been delayed in issuing its tank criteria because the law authorizing the state to regulate such tanks also ties the state's regulations to forthcoming federal standards—which haven't been issued.

As DEM's Wilms says, "While we have had tank criteria ready in rule form, and ready for hearings, because of this Hardison-type provision, we can't even go to public hearings because the feds haven't adopted their regulations. It may be March or April of 1988 [before the federal government acts], so we have to wait. And without that authority, we have no way of regulating underground tanks in North Carolina—and 64 percent of the groundwater problems we have today are related to underground tanks." The state thus is put in the position of waiting for the federal regulations, so the state won't have to redo its work and lower its standards if the federal standards are less restrictive. This amounts to a frustrating Catch-22 for environmentalists, developers, and state officials. The state has the authority to develop tank criteria, but it also has to be sure they don't exceed federal regulations—which haven't yet been issued.

Because of this confusion and division over the Hardison amendments, Bill Holman, who represents the Conservation Council of North Carolina and the N.C. Chapter of the Sierra Club before the legislature, makes a strong case for eliminating the laws. "I have no doubts that we'd be further along in environmental regulation than we are because the main concern is a philosophical one—that in North Carolina we are too dumb to solve our own environmental problems, and we've got to rely on big brother to take care of us. This whole notion of accepting only the minimum national standard on a pollutant, or having no standard at all, is just plain wrong."

But Ernie Carl, deputy secretary of natural resources and community development, sees it differently. "They [the amendments] probably made more of a difference in the past, back when the EPA was handing down edicts left and right, declaring standards frequently. But in recent years, the EPA has become more cagey, telling states, 'You come up with the regulations.' So the Hardison amendments have become something of a fifth wheel, and I think in five years they'll have become irrelevant."

But state officials also concede there is no guarantee of that. And state officials and environmentalists can point to several cases where the Hardison amendments have had an *impact* on state policy—sometimes adversely—and to instances where the Hardison amendment may do real harm.

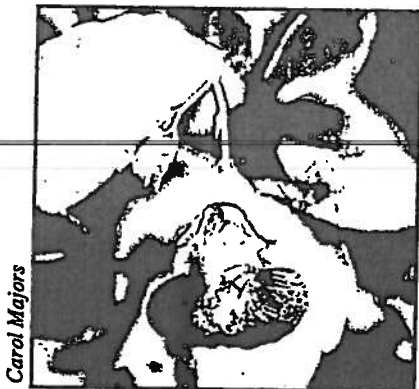
## The Effects of the Hardison Amendments

Consider these examples:

■ In 1975, North Carolina had one of the nation's stronger air pollution programs. But after the 1975 General Assembly adopted the Hardison amendment on air quality, the state's standards were changed to allow slightly higher overall levels of industrial ambient air emissions, called Total Suspended Particulates. The standards had been more stringent than the EPA's, but after the Hardison amendment was adopted, North Carolina's air emission standard was lowered to match the federal level. Lewis Martin, at the time the director of the Division of Environmental Management, was caught unaware by the 1975 Hardison amendment. "I didn't even realize what was going on until the thing was almost law," Martin told *The Charlotte Observer*. "If we had had more time, we'd have fought it." Martin said the big problem was North Carolina's flexibility in regulating the environment. "We've lost our maneuverability in this area," he said. "We're in a box—our standards will now be set by people in Washington, and if they lower their standards, we'll have to lower ours."<sup>10</sup>

■ Former Secretary of Natural Resources and Community Development Joe Grimsley says the Hardison amendments played a role in preventing the state from adopting a ban on biocides. In 1984, state regulators began noticing organic chemicals called biocides in the state's surface waters and effluents. Also known as organotins, biocides are chemical compounds designed to kill certain organisms. They are used in socks to kill odor-producing bacteria, for example, and in air-conditioning towers as disinfectants. The Division of Environmental Management staff, concerned about their effect on water quality and animal life, proposed to prohibit biocides in the state's waters, Grimsley said in an interview. But DEM ultimately decided not to push for a ban, and part of the reason was the Hardison amendment.

Bill Kreutzberger, a staff member in the Division of Environmental Management, said that DEM concluded that the state didn't have the authority to



“In all things of nature ...  
there is something of  
the marvelous.”

—Aristotle

ban biocides. “A zero standard was considered to be an effluent standard,” says Kreutzberger—and effluent standards where there are no federal standards are difficult to set. The state must go through a complex and time-consuming procedure, and DEM and the EMC didn’t want to wait that long to act. So instead of instituting that ban, the EMC approached it a different way, and set a water classification standard that had the effect of strictly controlling biocides—but still high enough to allow biocides to continue to be used.<sup>11</sup> Since that standard was adopted, state officials say they have found no evidence that biocides have been a problem. But the point is that the Hardison amendments did affect the way state policy was made. “The Hardison amendments dictated the method, the option we chose to deal with biocides,” notes Wilms.

■ The Hardison amendment on air quality also has been one of several factors in delaying the state in its attempts to clean up the air. Dr. Robert Harris of the UNC School of Public Health in Chapel Hill, himself a former member of the Environmental Management Commission, notes that the DEM staff is developing a proposal to control toxic air pollutants in North Carolina, but has been slowed partly because of the economic assessment that is required if the state seeks to adopt an environmental standard where the federal government has no standard. The state cannot adopt standards the federal government has not issued, according to G.S. 143-215.107(f)(ii), “unless the Environmental Management Commission first considers, among other things, an assessment of the economic impact of the proposed standards.”

Yet those assessments are expensive, and NRCD has not had the money to finish the work, according to the department. And so far, the EPA

has not adopted its own toxic air standards. So North Carolina is at least temporarily handcuffed, limited to controlling only the four pollutants that EPA already regulates, such as carbon monoxide and nitrogen oxide, while it waits for the money to finish its assessment and adopt its own. “My guess is that we’ll suffer the effects of these harmful pollutants [toxic emissions] because of the Hardison amendments,” says Harris.

Business and industry officials don’t agree with this interpretation. Charles Case, a Raleigh environmental lawyer who has represented industry on environmental cases before the EMC and the courts system, observes, “The Hardison amendments do not appear to require any delay in their promulgation. The primary source of delay is the fact that the state has undertaken the complex and lengthy task of trying to develop defensible toxic limits. Such determination may well exceed the resources of any state, and it may well be that only the federal EPA has the resources to undertake such a comprehensive and difficult initiative. The department sought outside technical assistance from the N.C. Academy of Science in developing toxic regulations, which required time. If the primary concern is inconsistency with a federal program, that concern would exist regardless of the Hardison amendments because the state program would have to be consistent with the federal program in order to be approved.”

■ Those emissions also hold the threat of damaging important crops to North Carolina, notes Wilms. “The state has to have the ability to be more stringent than the federal government because the EPA sets standards for nationwide applicability, not local situations. For example, the federal ozone standard is four times the level that adversely affects tobacco and corn [ranked as the second and ninth

largest cash crops in this state, which also are leading crops in Senator Hardison's home county of Lenoir] yet North Carolina cannot have a [tougher] standard because of the Hardison amendment. Now, we don't need a standard more restrictive than the EPA's for, say, cactus. But we may well need more restrictive standards for these others," says Wilms.

If toxic pollutants harmed tobacco and corn, the example used, then the Hardison amendments will have had the reverse of the intended effect—economic damage rather than economic improvement. Studies already have shown how acid rain damages corn, wheat, and soybeans in the Piedmont region of the state. Still, the N.C. Farm Bureau opposes repeal of the Hardison amendments. The Bureau supports the Hardison amendments because, says Farm Bureau President W. B. Jenkins, "We feel that decisions on standards are best left in the hands of elected officials who are more responsive to the needs of agriculture than appointed bureaucrats and employees of state agencies who are not familiar or knowledgeable concerning agricultural practices. Many individuals who want the power to change standards in North Carolina have no idea of the necessary changes in cultural practices and the cost of these changes to farmers. These production costs must be weighed against any potential threat to damaging crops in North Carolina."

■ And there are other coming issues that the Hardison amendments could affect adversely. For instance, more county and municipal governments—including the counties of Durham, Orange, and Alamance, as well as the city of Greensboro

are considering incinerators to reduce their solid waste problems (see p. 40 for more), yet so far the EPA has issued no regulatory standards for air emissions from these incinerators—despite evidence that these emissions can be toxic. "Federal regulations are expected in 1990," says Holman, but that may be "too late." It's difficult, time-consuming, and expensive for North Carolina to adopt its own standards in the absence of federal ones. And the same goes for emissions that may be linked to the problem of acid rain or acid deposition. Acid rain is thought to be part of the reason that trees are dying not only on Mt. Mitchell and other parts of western North Carolina, but in eastern and Piedmont North Carolina as well, according to controlled experiments at N.C. State University in Raleigh. Some policymakers contend there's little that North Carolina could do about acid rain, but with the Hardison amendments in place, it's difficult even for the state to consider doing something about it.

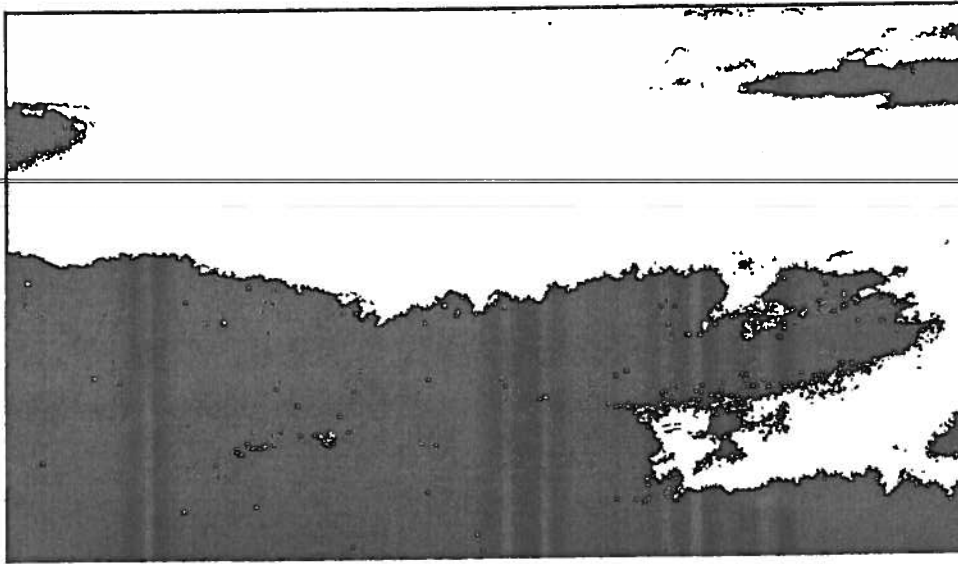
■ Several North Carolina cities—particularly Raleigh and Charlotte—have major problems with air quality because of automobile emissions. Carbon monoxide from auto exhausts can cause blood

### *The Hardison Amendment on Hazardous Wastes:*

"The rules and standards concerning hazardous waste promulgated ... shall be no more stringent than those rules, regulations and standards promulgated under the federal act; provided, that in establishing acceptable water table levels, location in relation to water supplies and population centers and appropriate buffer zones, the rules and standards promulgated . . . shall be at least as comprehensive and may be more comprehensive than the hazardous waste program prescribed under the federal act."

—G.S. 130-166.21D(b)





Robert Llewellyn

poisoning, and the air in these cities was listed by the EPA in August, 1987 as among the 10th worst among 65 areas nationwide that did not meet the federal carbon monoxide standard from 1984-86. And ozone, the principal pollutant in smog, is created from hydrocarbon emissions, which come from vehicle exhausts and other sources, including industrial emissions. Studies also have shown that ozone created in North Carolina has limited visibility in the western part of the state. Yet even if the state wanted to clamp down on automotive emissions, says Conservation Council of N.C. Executive Director Russell Norburn, "It would be virtually impossible to do that under the Hardison amendments."

Adds UNC's Harris, "If the people of North Carolina want their air to be cleaner than federal regulations permit for the *dirtiest* cities in America, we should be allowed to do it. I very much wish that we did not have the constraints of the Hardison amendments imposed upon us."

### Arguments for the Amendments

**L**ike the Farm Bureau, industry officials remain supportive of the Hardison amendments. For instance, Raymond H. Cates, manufacturing manager at the PPG Industries Inc. plant in Lexington, says the amendments make sense. "PPG is a good corporate citizen, and we always want to work with legislators to pass beneficial environmental laws that are not unduly restrictive," Cates told *North Carolina* magazine in 1986.<sup>12</sup> "But considering some of the proposals we've seen in Raleigh, I have to say thank God for the Hardison amendments. If

they had been repealed, we might be saddled with some laws that would be very hard to live with."

Cates no doubt was referring to administrative rules and regulations when he referred to "laws," because the fact is that the amendments do not preclude the legislature from adopting any law it chooses. The General Assembly has, of course, passed some *laws* that are more restrictive than federal regulations, such as the ban on shallow burial of radioactive wastes or the anti-GSX hazardous waste facility bill adopted in the 1987 session (see p. 78 for more). As Marc Finlayson, a spokesman for the N.C. Textile Manufacturers Association, puts it, "The amendments simply give the General Assembly scrutiny over promulgation of environmental rules by the administrative agencies. I would argue that the vast majority of lawmakers appreciate this kind of oversight."

North Carolina Citizens for Business and Industry (NCCBI), which functions as a statewide chamber of commerce, remains strongly behind the Hardison amendments. Joe Harwood, a Duke Power Company executive and chairman of NCCBI's Environmental Concerns Committee, says the Hardison amendments have not hampered the state and have made good business sense. "Our basic environmental policy at NCCBI is to promote environmental legislation that is scientifically sound and economically feasible. We believe that a consideration of the costs of a program is good public policy and does not serve as a deterrent to environmental protection. In the absence of a consideration of costs, environmental statutes and regulations can be imposed at great cost to business and the public without

substantial benefit to the environment," Harwood says.

"Industry recognizes and agrees with the need for reasonable environmental controls," adds Harwood, but those controls should stem from uniform standards based on scientific studies—studies he says the EPA is best equipped to do. "Also, federally promulgated standards allow industries located in more than one state of being assured of equitable standards based on scientific data compiled in a uniform manner. For these and the other reasons stated above, we believe that the Hardison amendments have benefited the state of North Carolina."

### Time for a Reappraisal

**T**hough many business groups still support the amendments, one top business lobbyist says it may be time for a reappraisal. Former state Rep. Sam Johnson of Raleigh, perennially rated one of the legislature's top lobbyists,<sup>13</sup> says that legislators "felt they were a reasonable ceiling on environmental regulations" when they were first adopted. One reason, he says, is that "Multi-state industries

have always argued that environmental legislation should generally be uniform throughout the nation and that it can be supplemented in local states by such matters as the Coastal Area Management Act or other regulations that would not be appropriate on a nationwide basis."

But, says Johnson, "Since these regulations have been on the books for 10 to 15 years, I would not object to a review of all of them, including an effort to see to what extent circumstances have changed."

Such a reappraisal is the recommendation of the 1983 report by the N.C. 2000 Commission, called *The Future of North Carolina*. That report observes:

"During the 1970s, when federal environmental regulation was expanding and the federal government developed substantial expertise on which to base such regulations, the state chose to link its own regulations directly to those of the federal government by enacting laws providing that they could be neither more restrictive nor more comprehensive than those of the federal government. As the federal government now reduces its role, and deliberately leaves more and more of these responsibilities

*Governor Martin filled out this environmental questionnaire during his 1984 campaign.*

Page 1

(Name) Jim Martin

**CLEAN VOTE QUESTIONNAIRE**  
For 1984 Candidates for Governor & Lieutenant  
N. C. League of Conservation Voters Box 12462 R

**I. Endorsement**  
The N. C. League of Conservation Voters is a conservative organization. The League supports "Clean Vote" candidates who are environmentally sound and who will direct mail and telephone calls to League members and other volunteers and contributions.

Would you like to be endorsed and supported by the N. C. League of Conservation Voters?  
☒ yes ☐ no

**II. Pollution Prevention Pays**  
An ounce of prevention is worth a pound of cure. Pollution indicates inefficient technology and inefficient environmental management. Pollution prevention technologies the N. C. League of Conservation Voters supports are those that prevent pollution and waste.

Preventing water, air, and land pollution is a benefit to the N. C. League of Conservation Voters. Do you support the N. C. League of Conservation Voters' position on Pollution Prevention?  
☒ yes ☐ no

**III. Hardison or Handcuff Amendments**  
North Carolina's air, hazardous waste and water management programs are statutorily prohibited from being stricter than the federal Environmental Protection Agency's. These three statutory provisions are known as the Hardison or Handcuff Amendments.

In addition to G. S. 130-166.21D(b) which handcuffs N. C.'s hazardous waste program (Question III A on Page 3), G. S. 143-215(c) handcuffs N. C.'s water quality regulations and G. S. 143-215.107(f) handcuffs N. C.'s air quality regulations to those of the federal EPA's.

Times have changed since these inflexible amendments were enacted. The budget of the EPA has been cut and is still less than it was in 1980. President Reagan has called on states to assume greater responsibility for environmental management.

EPA has adopted only a few standards for toxic metals in water and hazardous pollutants in air. EPA has virtually halted developing new standards for toxic metals and synthetic organic compounds in water and hazardous pollutants in air. The Hardison Amendments prevent North Carolina from adopting its own standards.

For example when the Division of Environmental Management discovered widespread use of biocides in manufacturing processes and waste water discharges, it had to primarily rely on the voluntary actions of the manufacturers to stop using them. EPA still has not adopted standards for biocides.

Conservationists believe that North Carolinians are intelligent and practical and that North Carolinians deserve the flexibility to determine their environmental standards.

Do you support repeal of G. S. 143-215(c), the Hardison Amendment that handcuffs N. C.'s water quality program to the federal EPA's?  
☒ yes ☐ no ☐ other (explain)

Do you support repeal of G. S. 143-215.107(f), the Hardison Amendment that handcuffs N. C.'s air quality program to the federal EPA's?  
☒ yes ☐ no ☐ other (explain)

Conservationists support the strategies of pollution prevention and waste management outlined in the TAC's report. However conservationists are concerned that the high short-run & low long-run costs of preventing and treating hazardous waste can not compete with the low short-run & high long-run costs of landfilling hazardous wastes. For example flammable wastes should be incinerated at high temperatures but may not be because it is cheaper to send them to a dump and let someone else worry about groundwater contamination.

Several legislative and administrative measures are needed to increase North Carolina's ability to safely manage hazardous waste and to increase public confidence.

A. Hardison Amendment  
General Statute 130-166.21D(b), known as the Hardison or Handcuff Amendment, prohibits North Carolina's hazardous waste management program from being more comprehensive or stringent than the federal Environmental Protection Agency's program. The Hardison Amendment effectively prevents North Carolina from requiring prevention and treatment of hazardous wastes. For example, flammable wastes can be incinerated, curative and restorative wastes can be neutralized, but because EPA has not limited burial or required treatment of these wastes, North Carolina can not.

Conservationists believe that repeal of the Hardison Amendment far exceeds the cost of hazardous waste prevention and treatment of waste, to protect groundwater and public health and to build public confidence.

Do you support repeal of GS 130-166.21D(b), the Hardison Amendment for hazardous waste?  
☒ yes ☐ no ☐ other (explain)

Do you support repeal of G. S. 143-215(c), the Hardison Amendment that handcuffs N. C.'s water quality program to the federal EPA's?  
☒ yes ☐ no ☐ other (explain)

Do you support repeal of G. S. 143-215.107(f), the Hardison Amendment that handcuffs N. C.'s air quality program to the federal EPA's?  
☒ yes ☐ no ☐ other (explain)

◆  
The most alarming of all man's  
assaults upon the environment  
is the contamination of air,  
earth, rivers, and sea. ... This  
pollution is for the most part  
irrecoverable.

—Rachel Carson  
◆

to the states, it is increasingly evident that North Carolina *must reassess* its own policies and priorities, including in some cases the possibility of formulating regulations that are tougher or broader than Washington's. It is also likely that, in addressing this issue, the state will identify approaches that are more innovative, more cost-effective, and better suited to its own environmental protection needs and its own businesses than those promulgated on a uniform nationwide basis" [emphasis added].<sup>14</sup>

The DEM's Wilms, who serves as the state's top environmental enforcer and whose staff is credited by environmentalists for improved enforcement efforts in recent years, agrees that the state would be better served without the Hardison strictures. "My concern is that the Hardison amendments—existing ones or new ones—might restrict the state's ability to move forward with a new concern," says Wilms. "For that reason, I would modify or eliminate those amendments. On the other hand, the state does need to be accountable and to determine what the impacts of a rule are. Once having done an economic impact, we find that it makes our case stronger."

Hardison himself concedes that it may be time for a reassessment—though he still views the amendments as useful. "In summary, I consider the Hardison amendments to have been practical solutions to some pretty difficult problems," says Hardison. "On the one hand, we must always demand strict environmental standards. On the other hand, we have an obligation to work with all of our citizens to insure that our environmental regulations are uniform and workable."

But, Hardison continues, "The Hardison

amendments were passed at a time when we had a very aggressive Environmental Protection Agency in Washington. That situation has changed considerably in the past several years and the time may be right to review the Hardison amendments to determine if they are in fact obstructing the wise management of our natural resources. However, before I would support relaxing the amendments, I would have to be assured that such action would not cause a renewal of the duplicating and overlapping local, state, and federal regulations which created unacceptable confusion and burdens on the public prior to the Hardison amendments."

Gov. Jim Martin is firm in his approach, however—he wants to repeal the amendments. "I believe the state must be able to develop and maintain regulations that protect the myriad environmental conditions unique to North Carolina. The state should not depend on the federal government, but should be the decision-maker in all matters relating to our environment."

And rather than hampering economic development, says Martin, repealing the Hardison amendments would enhance the state's efforts. "In the long run," says the Governor, "tougher environmental protection stimulates the economy and encourages development. By getting tougher on individual industries, we provide more room (in the finite world of natural resources) for newer and better industries with better technologies."

## Recommendation

On balance, the N.C. Center for Public Policy Research concludes that the three Hardison amendments—G.S. 143-215(c), G.S. 143-215.107(f), and G.S. 130-166.21—have disrupted North Carolina's ability to protect its environment and to safeguard its future. They have had a negative impact upon the quality of the state's air and upon its waters by delaying and hampering rulemaking, and have had a chilling effect on effective environmental regulation.

For these reasons, the Hardison amendments should be repealed:

■ Because of the 1975 Hardison amendment on air quality, ambient air standards for total suspended particulates were lowered to match those of the federal government.

■ The Hardison amendment on water effluent had an effect on environmental policymaking in 1984 when the Division of Environmental Management concluded it did not have the authority to seek a ban on a certain chemical compound. The environ-

mental threat was resolved without the ban that first had been proposed, but in future cases where a ban might be necessary, the Hardison amendment could be an impediment to necessary regulations.

■ Partly because of delays in federal regulations and the Hardison amendment's strictures, the state has not yet adopted standards dealing with toxic air pollutants, since the federal government has not adopted its own toxic air regulations.

■ Evidence has shown that air pollutants can damage major cash crops in North Carolina, and environmentalists fear that the Hardison amendments could delay the state in properly protecting agricultural products like tobacco and corn if air pollutants begin to damage them on a widespread basis.

■ And because of the Hardison amendments, the state may be delayed in adopting standards for municipal solid waste incinerator emissions, since federal standards are not expected for several years.

State officials, environmentalists, and industry officials have debated the merits of the Hardison amendments for years. But the record clearly shows that they have affected policy and they have affected policymaking, and in the future they could become significant impediments to environmental protection and to economic development.

For these reasons, the N.C. Center for Public Policy Research recommends that the 1988 General Assembly carefully consider the record, revive the legislation introduced in 1987, and repeal the Hardison amendments. ■■

#### FOOTNOTES

<sup>1</sup>Chapter 821, Section 6 of the 1973 Session Laws, now codified as G.S. 143-215(c). For more on how special provisions have affected the legislative process, see also Ran Coble,

*Special Provisions in Budget Bills, A Pandora's Box for N.C. Citizens*, June 1986, and March 4, 1987 follow-up report, N.C. Center for Public Policy Research.

<sup>2</sup>Chapter 784 of the 1975 Session Laws, now codified as G.S. 143-215.107(f), and amended by Chapter 545 of the 1979 Session Laws.

<sup>3</sup>Chapter 464 of the 1979 Session Laws, now codified as G.S. 130-166.21, and amended by Chapter 704 of the 1981 Session Laws. Senator Hardison says he did not sponsor this "Hardison amendment," but supported it in the Senate when it was proposed as part of a Senate committee substitute creating Chapter 704.

<sup>4</sup>House Bill 196, "Flexibility in Environmental Regulations," sponsored by Rep. Joe Hackney (D-Orange), 1985 General Assembly.

<sup>5</sup>"Unshackling the state," *The News and Observer* of Raleigh, April 15, 1985, Editorial Page.

<sup>6</sup>"Repeal 'Handcuff' Amendments," *The Charlotte Observer*, April 15, 1985, Editorial Page.

<sup>7</sup>"Affirming a Principle," *Winston-Salem Journal*, April 13, 1985, Editorial Page.

<sup>8</sup>House Bill 1104, "State to Regulate Hazardous Waste," and House Bill 1105, "Water Quality Rules Flexible," sponsored by Rep. Joe Hackney (D-Orange), 1987 General Assembly.

<sup>9</sup>These interpretations include the following memoranda and opinion: Memorandum from the Assistant Attorney General John R.B. Matthis, Feb. 17, 1975; Memorandum from Assistant Attorney General Dan Oakley, July 14, 1975; Memorandum from Assistant Attorney General Dan Oakley, July 24, 1975; Opinion of the Attorney General, Rufus L. Edmisten, Dec. 11, 1975; and Memorandum from Assistant Attorney General Dan Oakley, Aug. 1, 1975;

<sup>10</sup>Paul Bernish, "N.C. Eases Rules On Air Pollution," *The Charlotte Observer*, Sept. 25, 1975, p. C1.

<sup>11</sup>15 N.C. Administrative Code 2B, effective Jan. 15, 1985.

<sup>12</sup>"Businessman In The News," *North Carolina* magazine, N.C. Citizens for Business and Industry, December 1986, p. 51.

<sup>13</sup>Johnson was ranked first among the list of "Most Influential Lobbyists" for the 1985 legislative session in the biennial survey of legislators, lobbyists, and capital news correspondents conducted by the N.C. Center for Public Policy Research, and reported in *Article II: A Guide to the 1987-88 N.C. Legislature*, April 1987, p. 209.

<sup>14</sup>*The Future of North Carolina: Goals and Recommendations for the Year 2000*, Report of the Commission on the Future of North Carolina, published 1983, N.C. Department of Administration, pp. 156-157.



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